

## REMARKS

Claims 1-25, and 41-44 are pending in the present application. Claims 13 and 19 stand rejected as indefinite. Claims 1-6 and 8-11 stand rejected as obvious over Brick et al. in view of Oplinger et al., Applicant's admission, and either one of Singh et al. and Ramanathan et al. Claims 14-16, 20-23 and 25 stand rejected as obvious in further view of Wood. Claims 7 and 24 stand rejected as obvious in further view of Rockland et al. Claims 12, 13 and 17-19 stand rejected as obvious in further view of Gupta. Claims 41-44 stand rejected as obvious in further view of Wood and Burling et al.

Applicants thank the Examiner for his thorough review of the present application.

### I. Amendments to Specification

A minor amendment to the specification to insert the referenced U.S. Patent Application numbers for concurrently filed applications are made herein. Entry of the amendments is respectfully requested.

### II. Indefiniteness Rejection

Claims 13 and 19 stand rejected as indefinite. The Examiner kindly suggested claim amendments that would overcome this rejection. Applicants have herein amended Claims 13 and 19, consistent with the suggestions. The Examiner's assistance is gratefully acknowledged.

In addition, minor, clarifying amendments have been made. In particular:

Claim 3 is amended to replace "blanching" with "preserving" to avoid circular ambiguity.

Claim 6 is amended to replace "dwell time" with "temperature" to correct an obvious typographical error. Also, "for a dwell time of 3 minutes", is replaced with "and the predetermined dwell time is about 3 minutes" to clarify the antecedent basis.

All of the remaining Independent Claims (Claims 1, 14 and 41) are amended to clarify that the method is directed to the commercial processing of green Cicer beans.

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These amendments are all believed to be obvious and do not add any new matter.

III. Prima Facie Case of Obviousness Not Made

Applicants respectfully traverse the rejections based on obviousness under 35 U.S.C. § 103, particularly in view of the amendments herein. It is noted that all of the claims are amended to clarify that the claimed method is directed to the commercial processing of green Cicer beans.

1. The Cited Art is Not Directed to Commercial Production of Green Cicer Beans

Under the Supreme Court ruling in *Graham v. John Deere*, 383 U.S. 1 (1966), and as noted in Section 2141 of the M.P.E.P., "Under Sec. 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved." The M.P.E.P. indicates that the Patent Office policy is to consider the four factors enunciated in *Graham v. John Deere*, (A) determining the scope and content of the prior art; (B) ascertaining the differences between the prior art and the claims in issue; (C) resolving the level of ordinary skill in the art; and (D) evaluating evidence of secondary considerations.

As noted in Section 2141.02 of the M.P.E.P., ascertaining the differences between the prior art and the claims requires interpreting the claim language, considering both the invention and the prior art. This analysis requires interpreting the claimed invention as a whole, i.e., not merely focusing on the differences between the claims and the prior art, but determining if the claim as a whole would have been obvious. In the present application, the claims are directed to a method for the commercial production of green Cicer beans. None of the references cited in the Office Action are directed to the commercial production of green Cicer beans, and therefore it is believed that the claimed invention, as a whole, cannot be found obvious by the prior art.

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In particular, the primary reference cited in the Office Action is Brick et al., which is clearly directed to the processing of dry Cicer beans, and does not teach or suggest the processing of green Cicer beans. In fact Brick et al. teaches directly away from the production of green Cicer beans. For example, on page 6, in the first paragraph under "Harvest Procedures," Brick et al. states it is mandatory that the crop be dry prior to cutting: "Direct harvest requires that the crop be uniformly mature and dry prior to combining. Plants that are immature or green at the time of cutting will produce dark, discolored and immature green seed. Dark colored seed reduces quality and cannot be easily removed during the conditioning process (Canevari, 1994)." (Emphasis added.) In fact, Brick et al. teaches the use of a "foliar desiccant" to dry the crop.

The above quote from Brick et al. confirms the description in the background section of the present application, which states for example at page 2, line 17 *et seq.* "Commercial Cicer bean production has heretofore been limited to dry beans, typically harvested at about 10% moisture when, for example, the Kabuli-type bean obtains a characteristic yellowish cream color." Brick et al. also expressly teaches away from harvesting Cicer beans before they achieve the characteristic cream color of the dry bean, for example at page 6, in the first paragraph under "Processing and Marketing": "Field harvested garbanzo seed lots should have minimal mechanical damage and light cream color."

Oplinger et al. is also directed to dry Cicer beans, and not green Cicer beans. Oplinger et al. also teaches directly away from the processing of green Cicer beans, for example on page 5, at section I., stating:

Chickpea can be swathed when the plants are yellowing and the pods are their mature color. This should be done when the plants are slightly damp to facilitate forming the swath without yield loss. When the vines, pods and seeds in the windrow are dry enough (seed moisture about 13%) the swath can be combined. Seed color is important (buyers prefer a yellowish-crème color) so greenish and brown seeds are generally unacceptable.

And again, in Section J, "Moisture content should be around 10 to 12% to prevent insect and or disease outbreaks in storage."

None of the other references cited in the Office Action appear to be directed to commercial production of green Cicer beans. Ramanathan et al. merely indicates that green Bengal gram may be blanched in a particular solution and stored in friction top tins or polyethylene bags protected from light. Singh et al. similarly indicates that "semi-matured green seeds" may be blanched in a variety of solutions, and canned in brine. Rockland et al. is specifically directed to dry beans.

In summary, all of the cited art directed to the commercial production and processing of Cicer beans expressly teaches away from processing green Cicer beans. The brief abstracts that refer to green Cicer beans do not teach or suggest that green Cicer beans could be commercially produced, but merely indicate green Cicer beans may be blanched.

2. No Suggestion or Motivation to Combine References

Section 2143 of the M.P.E.P. requires that to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge available to one of ordinary skill in the art, to combine the references. In particular, "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure."

In the present case, as noted above, the Black et al. and Oplinger et al. references both teach directly away from processing green Cicer beans, insisting that it is mandatory to obtain dried seeds prior to processing. As noted in Section 2143.01 V. of the M.P.E.P., "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." In the present case, the Black et al. and Oplinger et al. references both clearly state that processing

green Cicer beans would make the resulting Cicer bean product unsatisfactory for its intended purpose.

Therefore, these references cannot form the basis for an obviousness rejection of the present claims, which all expressly recite the processing of green Cicer beans.

3. No Reasonable Expectation of Success

Section 2143.02 of the M.P.E.P. states that the prior art can be combined if there is a "reasonable expectation of success." As outlined in detail above, Black et al. and Oplinger et al. both indicate that there is no reasonable expectation of success to commercially process green Cicer beans. Oplinger et al. states, "Seed color is important (buyers prefer a yellowish-crème color) so greenish and brown seeds are generally unacceptable." (Page 5, section I, emphasis added.) Brick et al. states, "Direct harvest requires that the crop be uniformly mature and dry prior to combining . . . . Foliar desiccants can be used to dry the crop . . . . Swathing can also be used to dry the crop." (Page 6, "Harvest Procedures.")

Therefore, the cited art makes it clear that there is no reasonable expectation of success in combining the references to produce green Cicer beans.

4. The References Do Not Teach or Suggest All Claim Limitations

Section 2143 of the M.P.E.P. also requires for a *prima facie* case of obviousness that the cited prior art teach or suggest all of the claim limitations. Claim 1 of the present application recites, in part,

. . . separating green Cicer beans from harvested green Cicer bean product;  
cleaning said green Cicer beans; preserving said green Cicer beans . . . ;  
grading said green Cicer beans . . . ; and packaging said green Cicer beans.

(Emphasis added.) Independent Claims 14 and 41 are similarly directed to the processing of green Cicer beans.

As noted above, Brick et al. and Oplinger et al. are both specifically directed to the processing of dried Cicer beans, and teach directly away from the viability of processing green Cicer beans. Therefore, all of the limitations of the claims cannot be found in the cited prior art.

For the above reasons, a *prima facie* case of obviousness has not been made. There is no teaching or suggestion in the art to make the claimed combination and, in fact, the art teaches directly away from the claimed invention. There is no reasonable expectation of success in the prior art, and in fact the prior art indicates the present invention would not be successful. Finally, the prior art does not teach every limitation of the claims.

### CONCLUSION

Claims 1-44 are pending in the present application. Claims 26-40 are withdrawn. Claims 9, 10, 18, and 26-40 are herein canceled. Claims 13 and 19 are amended to overcome rejection for indefiniteness under 35 U.S.C. § 112. All of the independent claims are amended to clarify that the claimed method is directed the commercial production of green Cicer beans. Claims 3 and 6 are also amended to correct minor technical/typographical errors.

All of the pending claims were rejected as obvious over Brick et al., in view of a large number of prior art references. However, Brick et al. (and Oplinger et al.) does not teach or disclose the commercial processing of green Cicer beans, and in fact teaches directly away from the production of green Cicer beans. Both of these references teach or suggest it is mandatory that Cicer beans be harvested only after they have dried.

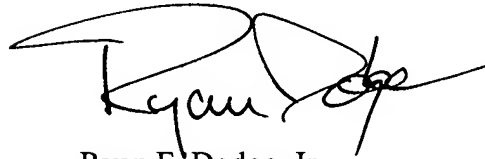
It is therefore asserted that a *prima facie* case of obviousness cannot be made because: 1) the cited references do not provide teaching or motivation to combine the references; 2) the cited references expressly teach that the presently claimed invention would not be successful; and 3) all of the limitations of the claims are not found in the cited references.

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Entry of the amendments, and a favorable disposition of the application, is respectfully requested.

Respectfully submitted,

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